



Notice of Tribal Consultation on the Department of Veterans Affairs' State Home Programs

AGENCY: Department of Veterans Affairs.

ACTION: Notice of tribal consultation.

SUMMARY: The Department of Veterans Affairs (VA) is seeking Tribal consultation to assist VA in implementing the requirements of section 3004 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (the Act). The Act amended the statutory authorities of two VA programs (the State Veterans Home Construction Grant Program and the State Home Per Diem Program) so that Indian tribes were included in definitions for “state” and “state home.” VA is required to consult with Indian tribes to determine if any legislative or administrative action is necessary to modify these state home programs to function efficiently in support of state Veterans homes operated by Indian tribes pursuant to the amendments made by section 3004 of the Act. VA seeks input on the legislative, regulatory and administrative modifications that may be necessary to support State Veterans Homes operated by American Indian and Alaska Native tribes in response to these amendments.

DATES: Comments must be received by VA on or before July 3, 2021.

ADDRESSES: Written comments may be submitted by any of the following methods:

- Federal Rulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Email to tribalgovernmentconsultation@va.gov.
- By mail to U.S. Department of Veterans Affairs, Office of Geriatrics and Extended Care (12GEC), 810 Vermont Avenue, NW, Washington, DC

20420. Comments should indicate that the submission is in response to

“Notice of Tribal Consultation State Veterans Homes.”

FOR FURTHER INFORMATION CONTACT: Scotte Hartronft, M.D., Executive Director, Office of Geriatrics and Extended Care (12GEC), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, 202-461-6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2021, the Act, Pub. L. 116-315, was passed into law. Among other things, this legislation (per section 3004(a)-(c)) changed or added statutory definitions for “state home” and “state” with regard to VA’s State Veterans Home Construction Grant and State Home Per Diem Programs (hereinafter combinedly referred to as “State Veterans Home Programs”) to include Indian tribes (as defined in 25 U.S.C. 5304). Per section 3004(d)(1) of the Act, not later than 180 days after the date of enactment of the Act, VA must consult with Indian tribes to determine if any legislative or administrative action is necessary to modify the State Veterans Home Programs to function efficiently in support of state homes operated by Indian tribes pursuant to the amendments made by section 3004. Per section 3004(d)(2) of the Act, not later than 90 days after completing these consultations, VA must also submit to the appropriate committees of Congress a report recommending legislative action that VA considers appropriate to modify the State Veterans Home Programs in light of those consultations. Per section 3004(d)(3), not later than 180 days after completing these consultations, VA must also make any modifications to regulations implementing the State Veterans Home Programs, for which legislative action is not necessary, as VA considers appropriate in light of those consultations. Therefore, in accordance with section 3004(d)(1), and prior to submitting a report to

Congress and making any modifications to regulations, VA seeks consultation with American Indian and Alaska Native tribes.

Pursuant to section 1741 through 1745 of title 38, United States Code, VA provides per diem payments to states for eligible Veterans receiving domiciliary or nursing care in a state home. This is referred to as the State Home Per Diem Program, and VA has implemented this program through regulations in Part 51 of title 38, Code of Federal Regulations (CFR). Pursuant to 38 U.S.C. 8131 through 8138, VA provides funding to assist states to construct state home facilities (or to acquire facilities that are to be used as state homes facilities) for furnishing domiciliary or nursing home care to Veterans, and to expand, remodel or alter existing buildings for furnishing domiciliary, nursing home or adult day health care to Veterans in state homes. This program is referred to as the State Veterans Home Construction Grant Program and was implemented by VA through 38 CFR part 59.

While, historically, these two programs have been available only to states, section 3004 of the Act amended this by revising the definitions of state home in 38 U.S.C. 101(19) and state in 38 U.S.C. 8131(2) to include Indian tribes (as defined in 25 U.S.C. 5304), and adding a definition for state in 38 U.S.C. 1741 to include Indian tribes (as defined in 25 U.S.C. 5304). These changes allow American Indian and Alaska Native tribes to apply for the State Veterans Home Programs. As previously mentioned, section 3004 of the Act requires VA to consult with American Indian and Alaska Native tribes to determine if any legislative or administrative action is necessary to modify the State Veterans Home Programs to function efficiently in support of state homes operated by American Indian and Alaska Native tribes pursuant to the amendments made by section 3004. Per section 3004 of the Act, after completion of such consultations, VA will submit a report to Congress recommending legislative action to modify the State Veterans Home Programs and

will make modifications to regulations implementing the State Veterans Home programs as necessary.

Through this tribal consultation, VA will ensure that the needs of the American Indian and Alaska Native Veterans and the priorities of tribal governments are taken into consideration as part of any changes VA makes to the State Veterans Home Programs, now and in the future. Such changes have the potential to increase American Indian and Alaska Native Veterans' access to health care (specifically, nursing home, domiciliary and adult day health care). The Veterans Health Administration (VHA) will use input received from tribal leaders to inform Congress of any recommended legislative action appropriate to modify the State Veterans Home Programs and related implementation regulations.

Tribal Consultation

Pursuant to changes made by section 3004 of the Act, VA is seeking written comments from tribal leaders and representatives on what legislative, regulatory and administrative modifications may be necessary to support State Veterans Homes operated by American Indian and Alaska Native tribes. Through this tribal consultation, the Secretary seeks information on the questions listed below. Comments do not need to address every question and should focus on those that relate to their expertise or perspectives. To the extent possible, please clearly indicate which questions you address in your response and include any rationale and information to support your response.

1. Are changes to 38 U.S.C. 1741 through 1745 needed so that the State Home Per Diem Program functions efficiently in support of state homes operated by American Indian and Alaska Native tribes (as defined in 25 U.S.C. 5304)? If so, what changes do you recommend be made to these authorities and why?

2. Are changes to 38 U.S.C. 8131 through 8138 needed so that the State Home Construction Grant Program functions efficiently in support of state homes operated by American Indian and Alaska Native tribes (as defined in 25 U.S.C. 5304)? If so, what changes do you recommend be made to these authorities and why?
3. Are changes to 38 CFR part 51 needed so that the State Home Per Diem Program functions efficiently in support of state homes operated by American Indian and Alaska Native tribes (as defined in 25 U.S.C. 5304)? If so, what changes do you recommend be made to the regulations and why? These regulations are located at:
<https://www.ecfr.gov/cgi-bin/text-idx?SID=7e1be46cc62e7f0ecde2ac13524459d5&mc=true&node=pt38.2.51&rgn=div5>.
5. Are changes to 38 CFR part 59 needed so that the State Home Construction Grant Program functions efficiently in support of state homes operated by American Indian and Alaska Native tribes (as defined in 25 U.S.C. 5304)? If so, what changes do you recommend be made to the regulations and why? These regulations are located at:
<https://www.ecfr.gov/cgi-bin/text-idx?SID=7e1be46cc62e7f0ecde2ac13524459d5&mc=true&node=pt38.2.59&rgn=div5>.
6. What administrative actions, if any, do you recommend are needed to modify the State Veterans Home Programs to function efficiently in support of state Veterans homes operated by American Indian and Alaska Native tribes (as defined in 25 U.S.C. 5304)?

As part of this tribal consultation, and so tribes can provide thoughtful and thorough responses to the questions above, VA is providing tribes with a virtual webinar that will provide detailed information about the State Veterans Home Programs. On May 25, 2021, VHA will provide an educational virtual webinar session that will include describing the requirements for receiving a State Veterans Home Construction Program grant; how to seek recognition and certification of a state Veterans home; how per diem payments are calculated; and the requirements to receive per diem payments. The webinar is an additional opportunity for participants to get questions answered, and to engage in an open discussion with leaders of the VA Office of Geriatrics and Extended Care about how VHA can better serve the long term and geriatric care needs of American Indian and Alaska Native Veterans. The webinar is voluntary. Registration for this event is located at <https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=e45a91c0eb17719cd7b724f96d810cf83>.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 13, 2021, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

*Regulation Development Coordinator,
Office of Regulation Policy & Management,
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